

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JUAN BALLESTEROS and ARIEL CONTRERAS,
for and on behalf of all others similarly situated,

Plaintiffs,

REPORT AND
RECOMMENDATION

- v -

CV-09-4020 (DGT)(VVP)

JMP RESTORATION CORPORATION, et al.,

Defendants.

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Counsel for the plaintiffs in this collective action under the Fair Labor Standards Act, Virginia & Ambinder LLP, have moved to withdraw as counsel, and their motion was granted today at a hearing held before me. Prior to today's hearing, in accordance with the court's direction, counsel served copies of the court's order scheduling today's hearing on the two named plaintiffs. One of the two, Ariel Contreras, responded to counsel and indicated his willingness to join with the plaintiffs in a related action against the defendants, *Marin, et al. v. JMP Restoration Corp., et al.*, 09 CV 1384 (DGT). He has signed the required Consent form which is expected to be filed shortly, and his claims will therefore proceed in that action.¹

Counsel's efforts to contact the other named plaintiff, Juan Ballesteros, have proved unsuccessful. Notice of today's hearing was sent by certified mail and by overnight courier to the address he provided to counsel; both notices were returned as undeliverable. Counsel also attempted to reach Ballesteros by telephone, but the

¹By prior order, this case was to have been consolidated with the earlier filed case for all purposes, but the requisite docket entries dismissing the instant matter have not yet occurred.

telephone had been disconnected. Finally, counsel was informed by Contreras that he believed Ballesteros was no longer in the United States. Accordingly, as Ballesteros's counsel has been relieved and there is no means of communicating with Ballesteros, I recommend that his claims be dismissed without prejudice.

* * * * *

Any objections to the Report and Recommendation above must be filed with the Clerk of the Court within 14 days of receipt of this report. Failure to file objections within the specified time waives the right to appeal any judgment or order entered by the District Court in reliance on this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see, e.g., Thomas v. Arn*, 474 U.S. 140, 155, 106 S.Ct. 466, 474, 88 L.Ed.2d 435 (1985); *Mario v. P & C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002); *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1054 (2d Cir. 1993); *Frank v. Johnson*, 968 F.2d 298 (2d Cir.), *cert. denied*, 113 S. Ct. 825 (1992); *Small v. Secretary of Health and Human Serv.*, 892 F.2d 15, 16 (2d Cir. 1989) (*per curiam*).

Respectfully Recommended:

Viktor V. Pohorelsky

VIKTOR V. POHORELSKY

United States Magistrate Judge

Dated: Brooklyn, New York
December 13, 2010